

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5698 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ROOPSING B MADORIYA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR. NIGAM SHUKLA, Addl. G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 30/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the petitioner's detention order dated 26.4.1996 passed by the Police Commissioner, Ahmedabad City. The detention order was executed on 26.4.1996 and since then the petitioner is under detention lodged at Rajkot District Jail, Rajkot.

The grounds of detention enclosed with the

detention order show that that the petitioner was engaged in the business of import of foreign liquor and sale of the same in the Ahmedabad City along with his associate Kallubhai Laxminarayan Tiwari. The detaining authority has noted the registration of two criminal cases against the petitioner under the Prohibition Act Saherkotada and Ahmedabad Railway. The detaining authority has mentioned that the petitioner was a bootlegger and he and his associate Kallubhai were doing business of import of the foreign liquor from other provinces. He was thus carrying on the business of unauthorised foreign liquor. Statements of certain witnesses with regard to the incident dated 16.4.1996 wherein the witness was beaten taking him to be a police informer and the other incident dated 9.4.1996 when the witness was pressurised to store the liquor in his house and on his refusal he was given a public beating and weapons were used have also been taken note of. Four witnesses have supported the incidents dated 16.4.1996 and 9.4.1996. The detaining authority has also taken into consideration that externment proceedings may not be sufficient in the instant case to prevent the petitioner from continuing his anti-social activities.

The detention order has been challenged on more than one grounds but at the time of arguments the learned counsel kept his arguments confined to the question that the allegations and the material relied upon by the detaining authority against the petitioner did not constitute a case of breach of public order and at the most it could be said to be a case of breach of law and order only.

I have considered the submissions made on behalf of both the sides. In view of the reasons given in the decision dated 4.10.1996 of this court rendered in Special Civil Application No. 3879 of 1996, the allegations and material as have been relied upon in the instant case even if taken to be true cannot be said to constitute a case of breach of public order. It is at the most a case of breach of law and order for which ground the detention order could not be passed. The case is fully covered by the decision dated 4.10.1996 mentioned above and the impugned order cannot be sustained in the eye of law.

Accordingly the Special Civil Application is allowed and the impugned detention order dated 26.4.1996 passed by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and the petitioner's

detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty if not required in any other case. Rule is made absolute.

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